

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

David Cox,)	
Plaintiff)	
)	
vs.)	CIVIL ACTION
)	NO. 05-CV-11608
Ryan Marini, Sean Bordwell and)	
Andrew Kiriakos,)	
Defendants)	

DEFENDANT'S, ANDREW KIRIAKOS, MOTION TO SET ASIDE DEFAULT

Now comes the defendant, Andrew Kiriakos, pursuant to Rule 55(c) and, respectfully, requests this Honorable Court issue an order vacating the default in this matter which was granted on April 10, 2008. As reasons in support, the defendant, Andrew Kiriakos, cites the following.

Mr. Kiriakos was served with the Summons and Complaint on or about February 14, 2008. Thereafter, his father made contact with Attorney Paul Kelliher for the purpose of representation. (Please refer to Affidavit of Arthur A. Kiriakos attached hereto as Exhibit A). As the affidavit makes clear, the defendant operated under the belief that Attorney Kelliher would be representing his interests with regard to this matter. Approximately two months later, on April 21, 2008, the defendant's father received a phone call informing him that Attorney Kelliher did not practice in the Federal Court, and, for that reason, would not be representing Andrew Kiriakos. Arthur Kiriakos then contacted Attorney Paul Lees, on vacation, and they spoke on April 24, 2008.

On that same date, the undersigned spoke with Damon Hart to get a general overview of the case. I then, subsequently, spoke with Andrew Kiriakos about

representation and have attempted to make arrangements for a meeting to discuss the contents of the Complaint.

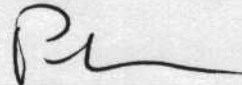
In early May, Andrew Kiriakos was finishing up his studies at Suffolk University which caused some delay occasioned by the death of his grandmother as well. Notwithstanding, the undersigned attorney appeared in court on the status conference on Monday, May 12, 2008, and the court took note of the same.

In support of the good cause stated, the defendant submits the information contained in the affidavit and the representation that defenses are available to this lawsuit would compel this Court to issue an order vacating the default judgment entered. Attached as Exhibit B is defendant Andrew Kiriakos' Answer to the Complaint, and he requests that the court permit it to be filed simultaneously, after the court issues the requested order.

WHEREFORE, for all the above reasons, the defendant, Andrew Kiriakos, respectfully, requests this Honorable Court issue an order setting aside default and permitting the parties to go forward with discovery.

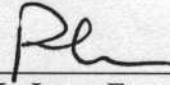
Certification Pursuant to Rule 7.1(A)(2)

I, Paul L. Lees, spoke to Attorney Damon Hart in an attempt to resolve the issue set forth in this motion on May 7, 2008 but was unsuccessful.



Paul L. Lees, Esq.

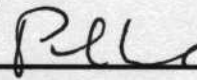
Defendant, Andrew Kiriakos,
By his attorney,



Paul L. Lees, Esq.
BBO # 556440
Lees Law Office
46 Middle Street
Gloucester, MA 01930
(978) 281-0777

Certificate of Service

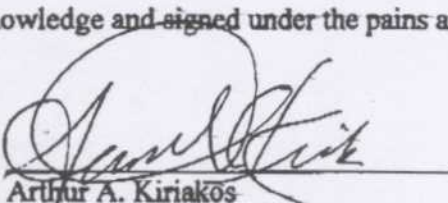
I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 27, 2008.



AFFIDAVIT OF ARTHUR A. KIRIAKOS

I, Arthur A. Kiriakos, residing at 3 Ethel Street, Blackstone, MA 01504, am the Father of Andrew A. Kiriakos of 199 Rosemary Street, Apt#2 Needham, MA 02494. On February 14, 2008, Andrew was served at his residence, with a summons and complaint filed by David Cox, and his representing counsel, I was never aware, nor did I address the fact as to the venue it was filed in. In attempting to assist my son, I contacted a longtime personal friend, Paul Kelleher, who is an attorney practicing in Fall River, MA, and I solicited his assistance in this matter. Mr. Kelleher kindly agreed to represent and defend my son, Andrew. On February 17, 2008, the aforementioned summons and complaint were mailed to his office, and there was never any additional conversation with, Mr. Kelleher, of where the complaint had been filed, nor the venue filed in. Then on April 21, 2008, I received a telephone call from Mr. Kelleher's office advising that the case was filed in Federal Court, and he did not practice in same. It was then that I contacted Mr. Paul Lees, from Gloucester, MA, who at the time was on vacation. I later spoke with him on April 24, 2008, after he had spoken with Mr. Cox's counsel, and he agreed to represent and defend my son, Andrew. The above noted affidavit is true to the best of my knowledge and signed under the pains and penalties of Perjury.

X:


Arthur A. Kiriakos

Date:

5/7/08

Exhibit "A"